

# CALIFORNIA CONSUMER ATTORNEYS, P.C.

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**LOANNE TRAN**

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

LOANNE TRAN, an individual,

**Plaintiff.**

vs.

MERCEDES-BENZ USA, LLC, a  
Delaware Limited Liability Company, and  
DOES 1 through 10, inclusive.

### Defendants.

Case No.:

## **COMPLAINT**

1. **VIOLATION OF SONG-BEVERLY ACT - BREACH OF EXPRESS WARRANTY**
  2. **VIOLENCE OF SONG-BEVERLY ACT - BREACH OF IMPLIED WARRANTY**
  3. **VIOLENCE OF THE SONG-BEVERLY ACT SECTION 1793.2(b)**

1 Plaintiff, LOANNE TRAN, an individual, alleges as follows against  
2 Defendants MERCEDES-BENZ USA, LLC, a Delaware Limited Liability Company  
3 ("Mercedes-Benz USA, LLC"), and DOES 1 through 10 inclusive, on information and  
4 belief, formed after a reasonable inquiry under the circumstances:

5 **DEMAND FOR JURY TRIAL**

6 1. Plaintiff, Loanne Tran, hereby demands trial by jury in this action.

7 **JURISDICTION AND VENUE**

8 2. This Court has jurisdiction over the subject matter and parties pursuant to  
9 28 U.S.C. § 1332 *et seq.*, because amount of recovery sought by Plaintiff exceeds the  
10 jurisdictional amount of \$75,000.00, and there is complete diversity amongst the  
11 parties.

12 3. The Subject Vehicle, as reflected in the sales contract, has an approximate  
13 value of \$39,640.82. (**Exhibit "A"**) Pursuant to the Song-Beverly Act, Plaintiff is  
14 seeking general, special, and actual damages, as well as civil penalties, up to two times  
15 the amount of actual damage. As such, Plaintiff seeks in the approximate amount of  
16 \$118,922.46. Plaintiff is also seeking reasonable attorneys' fees under the Act.  
17 Accordingly, Plaintiff claims meets the jurisdictional threshold required under 28  
18 U.S.C. § 1332 (a).

19 4. Complete diversity exists as Plaintiff, LOANNE TRAN, an individual, is  
20 citizen of the State of California.

21 5. With respect to Defendant, Mercedes-Benz USA, LLC, the citizenship of  
22 limited liability company for diversity jurisdiction purposes is determined by  
23 examining the citizenship of each member of the company. *Johnson v. Columbia*  
24 *Properties Anchorage, LP*, 437 F.3d 894, 899-900 (9th Cir. 2006); *Rolling Greens*  
25 *MHP, L.P. v. Comcast SCH Holdings, LLC*, 374 F.3d 1020, 1021-22 (11th Cir. 2004).  
26 Moreover, a member of a limited liability company is a person who has been admitted  
27 to a limited liability company as a member. See Cal. Corp. Code § 17701.02, subd.  
28

<sup>1</sup> || (p.); 6 Del. Code § 18-101, subd. (13); 6 Del. Code §§ 18-301 et seq.

2           6. Defendant, Mercedes-Benz USA, LLC, is a Delaware Limited Liability  
3 Company operating and doing business in the State of California. As reflected within  
4 Defendant's Statement of Information filed with the California Secretary of State, none  
5 of the individual members listed within are citizens of the state of California. Rather,  
6 the Statement of Information expressly indicates a Georgia address for each listed  
7 member. Accordingly, the members of Mercedes-Benz USA, LLC are citizens of the  
8 state of Georgia and not California, as reflected within Section D of the Statement of  
9 Information, filed by Defendant on April 19, 2022. A true and correct copy of  
10 Defendant, Mercedes-Benz USA, LLC's Statement of Information is attached herewith  
11 as **Exhibit "B."**

13       7. As such, none of Defendant's members, as a limited liability company, is a  
14      citizen of the state of California. Accordingly, there is complete diversity amongst the  
15      parties under 28 U.S.C. § 1332. (a) (1), as Plaintiff has now alleged sufficient facts to  
16      establish subject matter jurisdiction.

17        8. Venue is proper in, and Defendants are subject to the personal jurisdiction  
18 of, this court because the Subject Vehicle was leased at Mercedes-Benz of Long Beach,  
19 a Mercedes-Benz USA, LLC authorized dealership and repair facility, located in 2300  
20 E Spring St, Signal Hill, CA 90755.

21       9. Venue is also proper, as Plaintiff, Loanne Tran, is an individual residing in  
22 the City of Brea, State of California.

23       10. Venue is also proper, as Defendant, Mercedes-Benz USA, LLC, is and was  
24 a Delaware Limited Liability Company operating and doing business in the State of  
25 California.

## **GENERAL ALLEGATIONS**

27       11. Plaintiff, Loanne Tran, is an individual residing in the City of Brea, State  
28 of California.

1       12. Defendant Mercedes-Benz USA, LLC is and was a Delaware Limited  
2 Liability Company operating and doing business in the State of California.

3       13. These causes of action arise out of the warranty obligations of Mercedes-  
4 Benz USA, LLC in connection with a vehicle purchased by Plaintiff and for which  
5 Mercedes-Benz USA, LLC issued a written warranty.

6       14. Plaintiff does not know the true names and capacities, whether corporate,  
7 partnership, associate, individual or otherwise of Defendant issued herein as Does 1  
8 through 10, inclusive, under the provisions of section 474 of the California Code of  
9 Civil Procedure. Defendant Does 1 through 10, inclusive, are in some manner  
10 responsible for the acts, occurrences and transactions set forth herein, and are legally  
11 liable to Plaintiff. Plaintiff will seek leave to amend this Complaint to set forth the  
12 true names and capacities of the fictitiously named Defendant, together with  
13 appropriate charging allegations, when ascertained.

14       15. All acts of corporate employees as alleged were authorized or ratified by  
15 an officer, director, or managing agent of the corporate employer.

16       16. Each Defendant, whether actually or fictitiously named herein, was the  
17 principal, agent (actual or ostensible), or employee of each other Defendant, and in  
18 acting as such principal or within the course and scope of such employment or agency,  
19 took some part in the acts and omissions hereinafter set forth by reason of which each  
20 Defendant is liable to Plaintiff for the relief prayed for herein.

21       17. On February 15, 2020, Plaintiff leased a new 2020 Mercedes-Benz GLB,  
22 having VIN No. W1N4M4GB7LW024357 ("the Subject Vehicle"). Express  
23 warranties accompanied the sale of the Subject Vehicle to Plaintiff by which  
24 Mercedes-Benz USA, LLC undertook to preserve or maintain the utility or  
25 performance of Plaintiff's vehicle or to provide compensation if there was a failure in  
26 such utility or performance.

27       18. The Subject Vehicle was delivered to Plaintiff with serious defects and  
28 nonconformities to warranty and developed other serious defects and nonconformities

1 to warranty including, but not limited to, the powertrain system defects, engine  
2 defects, exterior and body component defects, recalls, and other serious  
3 nonconformities to warranty.

4 19. Plaintiff hereby revokes acceptance of the sales contract.

5 20. Pursuant to the Song-Beverly Consumer Warranty Act (herein after the  
6 "Act") Civil Code sections 1790 *et seq.* the Subject Vehicle constitutes "consumer  
7 goods" used primarily for family or household purposes, and Plaintiff has used the  
8 vehicle primarily for those purposes.

9 21. Plaintiff is a "buyer" of consumer goods under the Act.

10 22. Defendant Mercedes-Benz USA, LLC is a "manufacturer" and/or  
11 "distributor" under the Act.

12 23. To the extent that one or more class action lawsuits have been filed or are  
13 filed with respect to the nonconformities affecting Plaintiff's vehicle, without  
14 conceding the necessity of supplying such notice, Plaintiff hereby provides notice to  
15 Defendant and/or Defendant's agents of Plaintiff's intent to opt-out and be excluded  
16 from the settlement class of said class action lawsuit(s).

17 24. Plaintiff hereby demands trial by jury in this action.

18 **FIRST CAUSE OF ACTION**

19 **Violation of the Song-Beverly Act – Breach of Express Warranty**

20 16. Plaintiff incorporates herein by reference each and every allegation  
21 contained in the preceding and succeeding paragraphs as though herein fully restated  
22 and re-alleged.

23 17. Express warranties accompanied the sale of the vehicle to Plaintiff by  
24 which Mercedes-Benz USA, LLC undertook to preserve or maintain the utility or  
25 performance of Plaintiff's vehicle or to provide compensation if there was a failure in  
26 such utility or performance.

27 18. The Subject Vehicle was delivered to Plaintiff with serious defects and  
28 nonconformities to warranty and developed other serious defects and nonconformities

1 to warranty including, but not limited to, powertrain system defects, engine defects,  
2 exterior and body component defects, recalls, and other serious nonconformities to  
3 warranty.

4       19. Pursuant to the Song-Beverly Consumer Warranty Act (herein after the  
5 “Act”) Civil Code sections 1790 *et seq.* the vehicle constitutes “consumer goods” used  
6 primarily for family or household purposes, and Plaintiff has used the Subject Vehicle  
7 primarily for those purposes.

8       20. Plaintiff is the “buyer” of consumer goods under the Act.

9       21. Defendant Mercedes-Benz USA, LLC is a “manufacturer” and/or  
10 “distributor” under the Act.

11       22. The foregoing defects and nonconformities to warranty manifested  
12 themselves in the Subject Vehicle within the applicable express warranty period. The  
13 nonconformities substantially impair the use, value and/or safety of the vehicle.

14       23. Plaintiff delivered the vehicle to an authorized Mercedes-Benz USA,  
15 LLC repair facility for repair of the nonconformities.

16       24. Defendant was unable to conform Plaintiff’s vehicle to the applicable  
17 express after a reasonable number of repair attempts.

18       25. Notwithstanding Plaintiff’s entitlement, Defendant Mercedes-Benz  
19 USA, LLC has failed to either promptly replace the new motor vehicle or to promptly  
20 make restitution in accordance with the Song-Beverly Act.

21       26. By failure of Defendant to remedy the defects as alleged above, or to  
22 issue a refund or replacement vehicle, Defendant is in breach of its obligations under  
23 the Song-Beverly Act.

24       27. Under the Act, Plaintiff is entitled to reimbursement of the price paid for  
25 the vehicle less that amount directly attributable to use by the Plaintiff prior to the first  
26 presentation of the nonconformities.

27       28. Plaintiff is entitled to all incidental, consequential, and general damages  
28 resulting from Defendant’s failure to comply with its obligations under the Song-

1 | Beverly Act.

2       29. Plaintiff is entitled under the Song-Beverly Act to recover as part of the  
3 judgment a sum equal to the aggregate amount of costs and expenses, including  
4 attorney's fees, reasonably incurred in connection with the commencement and  
5 prosecution of this action.

6       30. Because Defendant willfully violated the Song-Beverly Act, Plaintiff is  
7 entitled in addition to the amounts recovered, a civil penalty of up to two times the  
8 amount of actual damages for Mercedes-Benz USA, LLC's willful failure to comply  
9 with its responsibilities under the Act.

## **SECOND CAUSE OF ACTION**

## **Violation of the Song-Beverly Act – Breach of Implied Warranty**

12       31. Plaintiff incorporates herein by reference each and every allegation  
13 contained in the preceding and succeeding paragraphs as though herein fully restated  
14 and re-alleged.

15       32. Mercedes-Benz USA, LLC and its authorized dealership at which  
16 Plaintiff purchased the Subject Vehicle had reason to know the purpose of the Subject  
17 Vehicle at the time of sale of the Subject Vehicle. The sale of the Subject Vehicle  
18 was accompanied by implied warranties provided for under the law.

19       33. Among other warranties, the sale of the Subject Vehicle was  
20 accompanied by an implied warranty that the Subject Vehicle was merchantable  
21 pursuant to Civil Code section 1792.

34. The Subject Vehicle was not fit for the ordinary purpose for which such goods are used because it was equipped with one or more defective vehicle systems/components.

25        35. The Subject Vehicle did not measure up to the promises or facts stated  
26 on the container or label because it was equipped with one or more defective vehicle  
27 systems/components.

28      36. The Subject Vehicle was not of the same quality as those generally

1 acceptable in the trade because it was sold with one or more defective vehicle  
2 systems/components which manifest as powertrain system defects, engine defects,  
3 exterior and body component defects, recalls, and other serious nonconformities to  
4 warranty.

5       37. Upon information and belief, the defective vehicle systems and  
6 components were present at the time of sale of the Subject Vehicle; thus, extending  
7 the duration of any implied warranty under *Mexia v. Rinker Boat Co., Inc.* (2009) 174  
8 Cal.App.4th 1297, 1304–1305 and other applicable laws.

9       38. Plaintiff is entitled to justifiably revoke acceptance of the Subject Vehicle  
10 under Civil Code, section 1794, *et seq*;

11       39. Plaintiff hereby revokes acceptance of the Subject Vehicle.

12       40. Plaintiff is entitled to replacement or reimbursement pursuant to Civil  
13 Code, section 1794, *et seq*.

14       41. Plaintiff is entitled to rescission of the contract pursuant to Civil Code,  
15 section 1794, *et seq*. and Commercial Code, section 2711.

16       42. Plaintiff is entitled to recover any incidental, consequential, and/or  
17 “cover” damages under Commercial Code, sections 2711, 2712, and Civil Code,  
18 section 1794, *et seq*.

### **THIRD CAUSE OF ACTION**

#### **Violation of the Song-Beverly Act Section 1793.2(b)**

21       43. Plaintiff incorporates herein by reference each and every allegation  
22 contained in the preceding and succeeding paragraphs as though herein fully restated  
23 and re-alleged.

24       44. Pursuant to Civil Code, section 1793.2, subdivision (a) a manufacturer  
25 that sells consumer goods in California, for which it has made an express warranty,  
26 shall maintain service and repair facilities or designate and authorize independent  
27 service and repair facilities to carry out the terms of those warranties.

28       45. Pursuant to Civil Code, section 1793.2, subdivision (b), when service and

1 repair of goods is necessary because they do not conform with the applicable express  
2 warranties, service and repair shall be commenced within a reasonable time by the  
3 manufacturer or its representative.

4 46. Civil Code, section 1793.2, subdivision (b) further states that goods shall  
5 be serviced or repaired so as to conform to the applicable warranties within 30 days  
6 and/or within a reasonable time.

7 47. The sale of the Subject Vehicle was accompanied by express warranties,  
8 including a warranty guaranteeing that the Subject Vehicle was safe to drive and not  
9 equipped with defective parts, including the electrical system.

10 48. Plaintiff delivered the Subject Vehicle to Mercedes-Benz USA, LLC's  
11 authorized service representatives on multiple occasions. The Subject Vehicle was  
12 delivered for repairs of defects, which amount to a nonconformities to the express  
13 warranties that accompanied the sale of the Subject Vehicle.

14 49. Defendant's authorized facilities did not conform the Subject Vehicle to  
15 warranty within 30-days and/or commence repairs within a reasonable time and  
16 Mercedes-Benz USA, LLC has failed to tender the Subject Vehicle back to Plaintiff  
17 in conformance with its warranties within the timeframes set forth in Civil Code  
18 section 1793.2(b).

19 50. Plaintiff is entitled to justifiably revoke acceptance of the Subject Vehicle  
20 under Civil Code, section 1794, *et seq*;

21 51. Plaintiff hereby revokes acceptance of the Subject Vehicle.

22 52. Plaintiff is entitled to replacement or reimbursement pursuant to Civil  
23 Code, section 1794, *et seq*.

24 53. Plaintiff is entitled to rescission of the contract pursuant to Civil Code  
25 section 1794, *et seq*. and Commercial Code, section 2711.

26 54. Plaintiff is entitled to recover any "cover" damages under Commercial  
27 Code sections 2711, 2712, and Civil Code, section 1794, *et seq*.

28 55. Plaintiff is entitled to recover all incidental and consequential damages

1 pursuant to 1794 *et seq* and Commercial Code sections, 2711, 2712, and 2713 *et seq*.

2 56. Plaintiff is entitled in addition to the amounts recovered, a civil penalty  
3 of up to two times the amount of actual damages in that Mercedes-Benz USA, LLC  
4 has willfully failed to comply with its responsibilities under the Act.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

- 7 1. For general, special and actual damages according to proof at trial in  
8 excess of \$75,000;
- 9 2. For rescission of the purchase contract and restitution of all monies  
10 expended;
- 11 3. For diminution in value;
- 12 4. For incidental and consequential damages according to proof at trial;
- 13 5. For civil penalty in the amount of two times Plaintiff's actual damages;
- 14 6. For prejudgment interest at the legal rate;
- 15 7. For reasonable attorney's fees and costs and expenses of suit; and
- 16 8. For such other and further relief as the Court deems just and proper under  
17 the circumstances.

18 Dated: January 9, 2023

19 **CALIFORNIA CONSUMER ATTORNEYS, P.C.**

20 /s/ Sepehr Daghighian

21 Michael H. Rosenstein, Esq.

22 Sepehr Daghighian, Esq.

23 Brian T. Shippen-Murray, Esq.

24 Attorneys for Plaintiff,

25 **LOANNE TRAN**

26 Plaintiff, **LOANNE TRAN**, hereby demands trial by jury in this action.